IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2006

Coram

THE HONOURABLE Mr.JUSTICE M.JAICHANDREN

C.R.P.(NPD)No.608 of 2003
and
C.M.P.No.6518 of 2003

Sudalayandi ... Petitioner

vs.

1. The Executive Officer,
   Sthlalasayana Perumal Thirukoil
   Mahabalipuram.

2. The District Collector,
   Kancheepuram.

3. The District Revenue Officer,
   Kancheepuram.

4. The Revenue Divisional Officer,
   Chengalpattu.

5. The Tahsildar,
   Thirukalukundram Taluk Office,
   Thirukalukundram. ... Respondents

Civil Revision Petition under Article 227 of The Constitution of India to set aside the Order dated 22.01.2003 and made in OS.SR 1189 of 2002 on the file of Principal Sub Court, Chengalpattu.

For petitioner : Mr.N.A.Nissar Ahmed
For R1 : Mr.V.Raghavachari
For R2-R5 : M/s.Dakshayani, AGP

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O R D E R

It is stated by the learned counsel for the petitioner, that when the suit papers were presented before the sub Court, Chengalpattu, it was returned by the Court on 22.01.2003 with the following endorsement:

"22.01.2003 Returned : The Honourable High Court, Madras, has directed in W.P.33663/2002 dated 20.09.2002 that "if the petitioners are so

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advised they can seek declaration of title by amending the prayer in the suit in O.S.104/88 on the file of District Munsif Court Thirukalukundram or work out their appropriate reliefs independently"

In this plaint the relief is for declaring the plaintiffs title over the suit property and for consequential permanent injunction. In the reply of the return, dated 07.01.2003, it has been stated as this suit is for declaration of title and for possession which is not in accordance with the plaint prayer. The plaint prayer does not comply with the direction of the Honourable High Court, Madras. When the plaint prayer is for declaration and for injunction the original plaint has to be amended as per the directions of the Honourable High Court.

Hence the plaint is returned with a direction to comply with the orders of the Honourable High Court, Madras.

Time Two Weeks."

2. The learned counsel for the plaintiff in the suit made a detailed endorsement while representing the papers on 07.01.2003 which is as follows :

"It is submitted that as per the Honourable High Court of Judicature of Chennai, the plaintiff has two options. 1st option is "in para 4 that if the plaintiffs are so advised they can seek declaration of title by amending the prayer in the lower court bare injunction suit or work out their appropriate relief independently" and second option is in the result of the writ petition "the writ petition is dismissed without prejudice to the right of the petitioners to work out their rights with regard to title and possession over the suit property in an appropriate civil proceedings before the competent civil court.

Hence the plaintiff as chosen the second option to file a suit for declaration of title and possession.

It is submitted that there is no question of resjudicata. The resjudicata comes only the matter or relief was tried by the Court. Here the relief is different, parties are changed between bare injunction suit and the suit. It is submitted that the lower court bare injunction suit was dismissed for default hence there is no question was resjuidcata and further the

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plaintiff has assured in the suit he will withdraw the lower court suit after numbering the above suit. Hence the question of resjudicata does not arise. It is submitted that if as per your order the plaintiffs are amending the lower court it is very difficult to amend the not only the prayer but he should amend from the cause title to prayer including all the paragraphs in the suit because the lower court suit is bare injunction but this suit is declaration of title and for possession.

It is therefore prayed that this Honourable High court may be pleased to number the suit urgently because of in lower court bare injunction suit was dismissed for default and further the 1st defendant at any time may evict with their power influence and their men along with their higher officials if the suit is not numbered the plaintiff will be evicted immediately or otherwise suitable orders may be passed."

3. Inspite of that, the learned Principal Judge passed the impugned order on 22.01.2003 returning the plaint with the direction to comply with the orders of this Court granting two weeks time for compliance.

4. It has been pointed out by the learned counsel for the petitioner as well as the counsel for the respondent that the High court's direction is found in para 4 of the order, dated 20.09.2002, in W.P.No.33663 of 2002 and it reads as follows :

"In the instant case, admittedly the petitioners have filed a suit O.S.No.105 of 1998 before the learned District Munsif, Thirukalukundram, for a bare injunction. If the petitioners are so advised, they can seek declaration of title by amending the prayer in the said suit or work out their appropriate reliefs independently. In any event in view of the ratio laid by this Court in KUPPUSWAMI NAINAR v. THE DISTRICT REVENUE OFFICER reported in 1995 (1)MLJ 426, it may not be proper for this Court to go into such dispute between the petitioners and the fifth respondent either with regard to their title or possession.

In the result the writ petition is dismissed without prejudice to the right of the petitioner to work out their rights with regard to title and possession over the suit property in an

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appropriate civil proceedings before the competent civil court, within eight weeks from today and till then there shall be an order of status quo."

5. On hearing the arguments of the learned counsel for the petitioner as well as the respondents and on a perusal of the documents filed in support of Civil Revision Petition, this Court finds it appropriate to set aside the order passed by Learned Principal Sub Judge, Chengalpattu on 22.01.2003, returning the plaint to comply with the orders of this Court, and to direct the petitioner to re-present the plaint before the District Munsif Court, Thirukalukundram, with all the necessary papers and on such re-presentation, the learned District Munsif, Thirukalukundram, is directed to take appropriate steps to hear the suit following the procedure established by law and dispose of the same within a period of six months from the date of receipt of a copy of this order.

6. At this stage, the learned counsel for the petitioner, prays for return of the original plaint which has been filed before this Court. It is ordered that the original plaint be returned to the learned counsel for the petitioner to comply with the directions made in this order.

7. The learned counsel for the respondent points out that in Paras 5 and 11 of the plaint filed in OS.SR.No.1189 of 2002, the reference to the direction of the High Court to file a suit may be appropriately amended.

8. With the above directions, the Civil Revision Petition is allowed. Consequently, connected Civil Miscellaneous Petition is closed. No Costs.

svki

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The District Munsif,
   Thirukalukundram.

2. The Principal Subordinate Judge,
   Chengalpattu.

Copy to:

The Section Officer/Record Keeper
VR Section, High Court, Madras

(For returning original plaint)

+ one cc to M/s. N.A. Nissar Ahmed, Advocate sr no. 4086
+ one cc to the Additional Govt, Pleader(CS) SR NO. 4045

MSR(CO)
NM(11.02.2006)

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